

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia

JANUARY TERM, 1907.

No. 1741.

469

No. 6, SPECIAL CALENDAR.

JOHN RIDDLE, SR., AND ALPHEUS E. RIDDLE,
APPELLANTS,

vs.

FRANK E. GIBSON.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED NOVEMBER 30, 1906.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

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In the Court of Appeals of the District of Columbia.

No. 1741.

JOHN RIDDLE, SR., ET AL., Appellants,
vs.
FRANK E. GIBSON.

1 In the Supreme Court of the District of Columbia, Holding
a Probate Court.

In re Estate of KATE ROSS, Deceased. Probate No. 13244.

Petition of Frank E. Gibson.

Your petitioner respectfully shows to the Court.

1. That he is a citizen of the United States and resident of the District of Columbia and files this petition in his own right as hereinafter shown.

2. That Kate Ross, whose last domicil was the District of Columbia, died in said District on the 17th day of October 1905 leaving a last will and testament dated September 12, 1905, filed in this Court on October 20, 1905, by and under the terms of which she left all of her property to your petitioner and nominated him executor and requested that he be not required to give bond.

3. That the said Kate Ross died seized of no real estate, but left personal property of the value of to wit: \$2768.23, consisting of stock in the Equitable Co-operative Building Association worth about \$1055, cash in bank \$1653.93 and personal effects amounting to about \$30.00, cash \$4.30 and a policy in the Metropolitan Life Insurance Company for \$25.00.

2 4. That said deceased left no debts excepting expenses incident to her last illness amounting to about \$150 and funeral expenses, \$260.50.

5. That the said deceased had been married and had one child, a daughter, who died about twenty years ago without being married and without issue. The husband of said Kate Ross was John W. Ross, who deserted her in 1869 leaving his domicil in this City without any known intention of changing the same and has not returned or been heard from since he left in 1869, although efforts have been frequently made to ascertain his whereabouts.

6. That the mother and father of said deceased are dead, but said deceased left surviving her a sister, Susan M. Shaw, residing at Benning, District of Columbia, and two brothers, John Riddle,

residing in the City of Washington, District of Columbia, and Charles Riddle, residing at La Plata, Maryland.

7. That said deceased had seven brothers and sisters, who predeceased her as follows: James Riddle, who is dead, and *and* whose entire family is dead leaving no issue, William Riddle, who died leaving as his only heir at law, a son, Alfris Riddle, residing in the District of Columbia, Jacob Riddle, who is dead and whose entire family is dead leaving no issue. Mary Riddle, who married Tobias Anderson; both are dead leaving as their only heirs at law, two sons, Richard Anderson residing at Hyattsville, Maryland, and William Anderson, residing at Branchville, Maryland: she afterwards married one Shaw who is now dead leaving no issue. Emlie Riddle married Jacob P. Smith; they are both dead leaving as their only heir at law, a daughter, Mrs. Mary E. Denny, residing at
3 Columbia, South Carolina. Sarah Riddle, who died unmarried and without issue. Louisa Riddle, who married one Smith; both are now dead leaving as their only heir at law, a daughter, whose name is unknown to your petitioner who was reared by a family in Baltimore; some years ago she disappeared and nothing has been heard of her since, though diligent inquiry has been made as to her whereabouts. These are all the heirs at law and next of kin of said deceased known to your petitioner. They are all *sui juris*.

8. That your petitioner is advised that he has the right after process served on the resident next of kin and upon the non-residents by publication as required by law and no cause to the contrary shown, to have said last will and testament admitted to probate and record and to have letters testamentary upon the said estate granted unto him upon his qualification.

Premises considered, petitioner prays:

1. That process of this Court issue against the said Susan M. Shaw, John Riddle, Charles Riddle, Alfris Riddle, Richard Anderson, William Anderson, Mary E. Denny, — Smith, and John W. Ross, and upon return of the process "not found" that publication may be had against them as required by law, directing them to appear in this Court by a day certain and show cause, if any they have, why the said will shall not be admitted to probate and record and letters testamentary granted unto your petitioner.

2. That said will be admitted to probate and record and letters testamentary on said estate be granted unto your petitioner.

4 3. That your petitioner be required to give only a special bond conditioned to pay all the debts and just claims against the testatrix, and all damages which shall be recovered against him as Executor in such sum as the Court may deem proper.

4. That your petitioner may have such other and further relief as to the Court may seem proper in the premises.

FRANK E. GIBSON, *Petitioner*.

WILSON & BARKSDALE,
Attorneys for Petitioner.

Frank E. Gibson on oath says he has read the foregoing petition by him subscribed and knows the contents thereof; that the statements made therein of his personal knowledge are true and those made upon information and belief he believes to be true.

FRANK E. GIBSON.

Subscribed and sworn to before me this 26th day of October 1905.

[NOTARIAL SEAL.]

ALBERT HARPER,
Notary Public, D. C.

(Endorsement: Petition of Frank E. Gibson, for probate and record of will. Wilson & Barksdale, Attorneys for Petitioner. Filed Oct. 26, 1905. James Tanner, Register of Wills, D. C. Clerk of Probate Court.)

5 I, Kate Ross of the City of Washington District of Columbia, being of sound and disposing mind, memory and understanding, do make publish and declare this instrument as and for my last will and testament hereby expressly revoking all wills, by me, at any other time, made and published.

Item 1. I direct that my executor, hereafter named, pay off and discharge all my just debts, including those incidental to my last illness and funeral as soon after my decease as practicable.

Item 2. All the rest, residue and remainder of my property, of all kinds and discription, both real, personal and mixed, I give, devise and bequeath unto my dear friend Dr. Frank E. Gibson, of the City of Washington District of Columbia, absolutely and in fee-simple.

Lastly I nominate, constitute and appoint the said Dr. Frank E. Gibson, executor of this my last will and testament and direct that said executor be required to give no bond.

Witness my hand and seal this 12th day of September, in the year of our Lord nineteen hundred and five, in the City of Washington, District of Columbia.

KATE ROSS. [SEAL.]

Then and there signed, sealed, published and declared by the said Testatrix, Kate Ross, as and for her last will and testament in the presence of us, who, at her request, in her presence and in the presence of each other, have hereunto subscribed our names as attesting witnesses.

F. B. EICHELBERGER, 900 *F St.*
ELLIOT H. THOMSON, 409 *T St.*

(Endorsement: Filed Oct. 20, 1905, James Tanner, Register of Wills, D. C. Clerk of Probate Court. Admitted to Probate Apr. 19, 1906.)

Supreme Court of the District of Columbia, Holding a Probate Court.

DISTRICT OF COLUMBIA, *To wit:*

On this 20th day of October, A. D. 1905 personally appeared Noel W. Barksdale who on oath says that he does not know of any will or codicil of Kate Ross late of said District, deceased, other than the foregoing instrument of writing dated September 12, 1905; that he received the same from Dr. Frank E. Gibson and that said Kate Ross died on or about the 17th day of October, 1905.

NOEL W. BARKSDALE.

Sworn to and subscribed before me,

WM. C. TAYLOR,

*Deputy Register of Wills for the District of
Columbia, Clerk of the Probate Court.*

7 In the Supreme Court of the District of Columbia, Holding a Probate Court.

TUESDAY, April 10, 1906.

Mr. Justice Barnard presiding.

In re Estate of KATE ROSS, Deceased. No. 13244, Adm. Docket 34.

FRANK E. GIBSON (Caveatee), Plaintiff,

vs.

JOHN RIDDLE, SR., ET AL. (Caveators), Defendants.

Now again come here the parties aforesaid in manner aforesaid and the same jury that was respited yesterday: whereupon, the jury, after the case is given them in charge, upon their oath say:

In answer to the first issue:

Was the said paper-writing duly executed in due form of law as and for the last will and testament of the said Kate Ross?

They answer "Yes."

In answer to the second issue:

Was the said paper writing procured from the said Kate Ross by undue influence?

They answer "No."

In answer to the third issue:

Was the said paper-writing procured from the said Kate Ross by fraud?

They answer "No."

In answer to the fourth issue:

Was the said Kate Ross at the time of the execution of the said paper-writing of sound and disposing mind and capable of executing a valid deed or contract?

They answer "Yes."

9 In the Supreme Court of the District of Columbia, Holding a
Probate Court.

In re Estate of KATE ROSS, Deceased. No. 13244, Adm. Doc. —.

This petition of John Riddle, Sr. and Alpheus E. Riddle, shows to the Court as follows:

1. These petitioners are citizens of the United States and residents of the District of Columbia and file this petition in their own right.

2. Kate Ross, late of said District, departed this life on or about the 17th day of October, 1905, possessed of certain personal property in said District but no real estate within the knowledge of these petitioners.

3. John W. Ross, the husband of said decedent, disappeared from his home in said District during or about the year 1869 since which time his relatives and friends have had no information concerning him, although they have made inquiry, and these petitioners believe and so aver that he died long before the year 1905. The only child of said Kate Ross was a daughter, who died during or about the year 1885, unmarried. The parents of said Kate Ross died prior to the year 1905.

4. These petitioners are two of the next of kin of the said Kate Ross and are informed and believe and so aver that her next of kin and the character and amount of her property at the time of her death are correctly set forth in the petition of Frank Gibson, herein filed on the 26th day of October, 1905, and they accordingly refer to so much of said petition as purports to set forth the same.

5. On or about the 20th day of October, 1905, a certain paper writing dated the 12th day of September, 1905, purporting to be the last will and testament of the said Kate Ross was filed in this Court and by the petition of Frank E. Gibson aforesaid, has been offered for probate and record in this Court as her last will and testament.

6. These petitioners are informed and believe and so aver that during all the month of September, 1905, and thereafter until the death of the said Kate Ross, she was disordered in mind and body; that during all said period the said Gibson, who is a practicing physician was her medical attendant; that the said paper writing or the execution thereof was procured from her by undue influence, fraud and circumvention practiced by the said Gibson or some other person or persons whose names are to these petitioners unknown and that at the time of the execution of said paper writing she was not of sound and disposing mind and capable of making a valid deed or contract.

Wherefore, these petitioners pray that this petition be considered as their caveat in opposition to the probate of said paper writing; that probate of said paper writing as the last will and testament of the said Kate Ross be denied; that issues be framed and tried by jury as to the validity of said paper writing as such last will

and testament and that such other and further proceedings may be had as may be proper in the premises.

JOHN RIDDLE, SR.
ALPHEUS E. RIDDLE.

LORENZO A. BAILEY,
Attorney for Petitioners.

11 DISTRICT OF COLUMBIA, ss:

We, John Riddle, Sr., and Alpheus E. Riddle do solemnly swear that we have read the foregoing petition by us subscribed and know the contents thereof; that the facts therein stated upon our personal knowledge are true and those therein stated upon information and belief we believe to be true.

JOHN RIDDLE, SR.
ALPHEUS E. RIDDLE.

Subscribed and sworn to before me this 8th day of November, A. D. 1905.

WM. F. COLUMBUS,
Notary Public, D. C.

[NOTARIAL SEAL.]

(Endorsement: Petition of John Riddle, Sr., and Alpheus E. Riddle, and caveat. Filed Nov. 9, 1905, James Tanner, Register of Wills, D. C., Clerk of Probate Court. Lorenzo A. Bailey, Attorney for Petitioners.)

12 In the Supreme Court of the District of Columbia, Holding
a Probate Court.

In re Estate of KATE ROSS, Deceased. Probate No. 13244.

The Answer of Frank E. Gibson, Executor.

Frank E. Gibson, as Executor answering the petition of John Riddle, Sr., and Alpheus E. Riddle, says:

1. That the residence and citizenship of petitioners are admitted.
2. That it is admitted that Kate Ross, late of the District of Columbia, died about October 17, 1905, possessed of certain personal property.

3. That it is true that John W. Ross, husband of the said Kate Ross, disappeared from his home in said District about 1869, since which time he has not been heard from. That it is true that Kate Ross had only one child, a daughter, who died unmarried in 1885, and that the parents of Kate Ross died prior to 1905.

4. That the allegations of paragraph four of said petition are admitted.

5. That it is true that on or about October 20, 1905, a certain paper writing dated September 12, 1905 purporting to be the last will and testament of the said Kate Ross was filed in this

13 Court and by your respondent, who was nominated and appointed therein executor, was offered for probate and record as the last will and testament of the said Kate Ross.

6. That respondent denies that during all the month of September 1905, and thereafter until her death, that the said Kate Ross was disordered in mind. She did have some bodily infirmities and during said period aforesaid, your respondent was her medical attendant. But your respondent denies that the said paper writing or the execution thereof was procured from the said Kate Ross by undue influence, fraud and circumvention practiced by your respondent, or some other person or persons; and it is further denied that, at the time of the execution of the said paper writing, the said Kate Ross was not of sound and disposing mind and capable of executing a valid deed or contract.

And now having fully answered this respondent prays to be hence dismissed.

FRANK E. GIBSON,
Respondent.

WILSON & BARKSDALE,
Attorneys for Respondent.

Frank E. Gibson on oath says he has read the foregoing answer by him subscribed and knows the contents thereof; that the statements therein made of his personal knowledge are true and those made upon information and belief he believes to be true.

FRANK E. GIBSON.

14 Subscribed and sworn to before me this 16 day of December, 1905.

WM. C. TAYLOR,
Deputy Register of Wills.

(Endorsement: Answer of Frank Gibson to caveat. Wilson & Barksdale, Attorneys for Respondent. Filed Dec. 16, 1905. James Tanner, Register of Wills, D. C. Clerk of Probate Court.)

15 In the Supreme Court of the District of Columbia, Holding a Probate Court.

In re Estate of KATE ROSS, Deceased. Probate No. 13244.

Upon consideration of the Caveat of John Riddle, Sr., and Alpheus E. Riddle, filed in the above entitled cause to the probate and record of a paper writing dated September 12, 1905, propounded by Frank E. Gibson as Executor as and for the last will and testament of Kate Ross, deceased, and of the answer of the said Frank E. Gibson to said caveat, it is this 10th day of January, 1906, ordered that the following issues be tried by jury in this Court, to wit:

1. Was the said paper-writing duly executed in due form of law as and for the last will and testament of the said Kate Ross.
2. Was the said paper writing procured from the said Kate Ross by undue influence.

3. Was the said paper-writing procured from the said Kate Ross by fraud.

4. Was the said Kate Ross at the time of the execution of the said paper-writing of sound and disposing mind and capable of executing a valid deed or contract.

And it is further ordered that the trial of said issues be
16 and the same is hereby fixed for the 24th day of January, 1906.

WENDELL P. STAFFORD, *Justice*.

(Endorsement: Order setting new time for trial &c., Filed Jan. 10, 1906. James Tanner, Register of Wills, D. C. Clerk of Probate Court.)

17 In the Supreme Court of the District of Columbia, Holding a Probate Court.

In re Estate of KATE ROSS, Deceased. No. 13244, Adm. Doc.

It is by the Court this 12th day of March, A. D. 1906, Ordered that the trial of the issues heretofore framed in these proceedings be and is hereby postponed until the 3d day of April, A. D. 1906.

JOB BARNARD, *Justice*.

O. K.

L. A. B.

(Endorsement: Order postponing trial of issues until Ap'l 3, 1906. Filed Mar. 12, 1906. James Tanner, Register of Wills, D. C., Clerk of Probate Court. Lorenzo A. Bailey, Att'y for Caveators. Wilson & Barksdale, Att'ys for Caveatees.)

18 Health Department of the District of Columbia.

78728.

WASHINGTON, D. C., April 2, 1906.

To whom it may concern:

This is to certify that premises 222 Anacostia avenue, Benning, D. C. have been quarantined since the 17th ultimo because of the existence of diphtheria therein.

Respectfully,

WM. C. WOODWARD, M. D.,
Health Officer.

WCF. WVL.

(Endorsement: Health Officer's Certificate. Filed Apr. 4, 1906. James Tanner, Register of Wills, D. C., Clerk of Probate Court. L. A. Bailey, Att'y for Caveators.)

19

Docket Entries.

April 4, 1906. Order that issues be tried by jury in attendance upon Criminal Court No. 2 and making Caveatee plaintiff and Caveators defendants, filed. Jury sworn and respited until tomorrow.

April 5, 1906. Jury respited until Monday next.

April 9, 1906. Jury respited until tomorrow.

20 In the Supreme Court of the District of Columbia, Holding a Probate Court.

In re Estate of KATE ROSS, Deceased. Probate No. 13244.

This cause coming on to be heard upon the motion of the caveators for a new trial, and the same having been considered by the Court, it is this 19th day of April 1906, ordered that said motion be and the same is hereby overruled.

JOB BARNARD, *Justice.*

(Endorsement: Order overruling motion for new trial. Filed Apr. 19, 1906, James Tanner, Register of Wills, D. C., Clerk of Probate Court.)

21 In the Supreme Court of the District of Columbia, Holding a Probate Court.

In re Estate of KATE ROSS, Deceased. Probate No. 13244.

Upon consideration of the petition of Frank E. Gibson for the probate and record of the last will and testament of Kate Ross, deceased, and for letters testamentary, and the verdict of the jury impaneled to try the issues framed in the case, it is this 19th day of April 1906, ordered, adjudged, and decreed:

1. That the said paper-writing dated September 12, 1905, and filed in this Court, was executed in due form of law as and for the last will and testament of the said Kate Ross.

2. That the said paper-writing was not procured from the said Kate Ross by undue influence or fraud.

3. That the said Kate Ross at the time of the execution of the said paper-writing was of sound and disposing mind and capable of executing a valid deed or contract.

4. That the said paper-writing be and it is hereby admitted to probate and record as a will bequeathing and devising personal property and real estate and that letters testamentary on said estate issue to Frank E. Gibson upon his qualification and giving a general bond in the sum of three thousand (\$3000.) Dollars for the faithful performance of the trust reposed in him.

5. That the costs of the trial be and they are hereby adjudged against Alpheus E. Riddle and John Riddle, the caveators in this case, for which execution may issue.

6. From this order the said Alpheus E. Riddle and John Riddle pray an appeal, which is hereby granted and the bond for costs on appeal is fixed at *One Hundred (\$100.00) Dollars, or a deposit of Fifty Dollars (\$50.) cash.

WENDELL P. STAFFORD, *Justice.*

*L. A. BAILEY.

(Written with pen.)

(Endorsement: Order admitting will to probate and record and granting letters testamentary to F. E. Gibson. Filed Apr. 19, 1906. James Tanner, Register of Wills, D. C., Clerk of Probate Court.)

23

Docket Entries.

May 15, 1906. Appeal bond approved and filed.

24

Memoranda.

June 1, 1906. Time for presentation of bill of exceptions extended to August 2, 1906, and for filing record in Court of Appeals to Sept. 5, 1906.

Aug. 2, 1906. Proposed bill of exceptions presented to the Court for settlement.

Aug. 15, 1906. Time for filing record in Court of Appeals extended to Nov. 5, 1906.

Nov. 2, 1906. Time for filing record in Court of Appeals extended to Nov. 30, 1906.

25

In the Supreme Court of the District of Columbia, Holding a Probate Court.

In the Matter of the Estate of KATE ROSS, Deceased. No. 13244, Adm. Doc. 34.

Bill of Exceptions.

Be it remembered, That on the 4th day of April, A. D. 1906, before the Honorable Job Barnard, one of the Associate Justices of this Court, the caveators were called upon to proceed to trial by jury upon the issues herein framed; but the caveators by their attorney then and there objected to such trial at that time and filed in these proceedings and read to the Court their motion for a postponement of the trial and also their affidavits in support of said motion, as follows:

26

In re Estate of KATE ROSS, Deceased. No. 13244, Adm. Doc. 34.

Now come here the caveators by their attorney and show to the Court that Mrs. Susan Shaw residing at premises No. 222 Anacostia Ave., Benning, D. C. is a sister and next kin of the said Kate Ross,

deceased; that the premises are now quarantined because of the existence of diphtheria therein; that the dwelling house upon said premises in which said quarantine is maintained is a small two story frame house wherein the said Mrs. Shaw occupies the front room on the second floor and is now there confined sick with La Grippe; that in the back room on the same second floor of said house two of her grandchildren are confined sick with diphtheria; that on Sunday April 1, 1906, the caveator Alpheus E. Riddle accompanied by his attorney L. A. Bailey went to the said premises for a conference with the said Mrs. Shaw concerning the testimony to be given by her in these proceedings at the trial herein but found the diphtheria quarantine card posted on the house and thereupon they called upon her physician, Dr. L. S. Savage whose office is at his residence about fifty yards from Mrs. Shaw's house and they were then and there informed by him and believe that the said quarantine would be continued for about one week longer when a test would be made and if such test would disclose the continuance of the diphtheria germ that such quarantine would be continued one week or possibly two weeks longer. They then

27 and there informed him that they had business to transact with Mrs. Shaw and thereupon he expressed the opinion that the transaction of such business with her should be postponed not only on account of her own condition but also because of the existence of diphtheria at that house. The caveators further show to the court that they desire to have the testimony of the said Mrs. Shaw at said trial and expect to be able to prove by her among other things that Dr. Frank E. Gibson the proponent of the alleged will stated to her since the death of the said Kate Ross that the paper writing herein sought to be proven as the last will and testament of the said Kate Ross was prepared for her and was signed by her at the office of the Washington Loan and Trust Company in the City of Washington, D. C. and that he, the said Dr. Frank E. Gibson took her the said Mrs. Ross to the said office at that time for that purpose. They also expect to prove by the said Mrs. Shaw that the said Dr. Gibson has since the death of said Kate Ross made diligent efforts to induce the said Mrs. Shaw to oppose the said caveators and to withhold from them the information in her possession material to the issues in this case and that as a result of the efforts and influence of the said Dr. Gibson the said Mrs. Shaw has been and is unwilling to furnish these caveators with such information. They are also advised by counsel and believe and so aver that the testimony of the said Mrs. Shaw is material and necessary on behalf of the said Caveators herein and that the caveators will be deprived of the benefit of the information in her possession unless her testimony herein may be adduced

28 by an oral examination in open court in the presence and hearing of a jury. They also are informed and believe and so aver that the said Mrs. Shaw is unable at this time by reason of her illness to attend the trial herein on April 4th, 1906 or within at least one week thereafter; that it would not be proper or safe to require or permit her to attend said trial until after the said

quarantine is discontinued and the said premises thoroughly disinfected; that the attorney for the said caveatees has declined and declines because of said diphtheria to visit said premises for the purpose of taking the deposition there of the said Mrs. Shaw.

Wherefore and by reason of other matters appearing of record herein the caveators by their attorneys move the court to further postpone the trial of the issues framed in these proceedings for one week or for such further time as the Court may deem reasonable.

LORENZO A. BAILEY,
Att'y for Caveators.

DISTRICT OF COLUMBIA, ss:

Alpheus E. Riddle and Lorenzo A. Bailey being first duly sworn say upon their oaths, respectively, that they have read the foregoing motion subscribed by Lorenzo A. Bailey as attorney for the caveators and know the contents thereof and that the facts therein stated upon their personal knowledge are true and those therein stated upon information and belief they believe to be true.

ALPHEUS E. RIDDLE.
LORENZO A. BAILEY.

29 Subscribed and sworn to before me this 3rd day of April,
A. D. 1906.

WM. F. COLUMBUS,
Notary Public, D. C.

[NOTARIAL SEAL.]

DISTRICT OF COLUMBIA, ss:

I, Lorenzo A. Bailey, attorney for the said caveators do hereby certify that in my opinion the said caveators cannot safely proceed to a trial in these proceedings without the testimony of the above named Mrs. Susan Shaw or at least until I shall have had an opportunity to confer with her in reference to the matters involved in the issues framed; that on April 1st, 1906, I called at her home for such conference and found the house quarantined on account of diphtheria therein and accordingly I was unable to see her. I was then and I am now informed and I believe that it would be imprudent and unsafe for me to enter said house or to have such a conference with her until after such quarantine shall have been raised and the said premises thoroughly disinfected. Upon all the information in my possession I believe that the said Mrs. Shaw is in the possession of much information which is material in support of the issues herein joined on the part of the said caveators in addition to the facts mentioned in the affidavit of myself and Alpheus E. Riddle hereto attached and which is now referred to.

LORENZO A. BAILEY.

30 Subscribed and sworn to before me this 3rd day of April,
A. D. 1906.

WM. F. COLUMBUS,
Notary Public, D. C.

[NOTARIAL SEAL.]

31 But the caveatee by his attorney then and there objected to such postponement and offered the following affidavit and made the following statement, to wit:

In re Estate of KATE ROSS, Deceased. No. 13244.

L. S. Savage, on oath says that he is a practicing physician and as such is the physician in charge of the cases of diphtheria at the home of Mr. Milstead at Benning, District of Columbia, in which home Mrs. Susan M. Shaw resides.

That at the present time, and for some days past, Mrs. Shaw has been sufficiently strong, mentally and physically, to have her deposition taken at her home; but she is not, has not been, and will likely never be, able to attend Court and give her testimony.

That the said home is not quarantined and that persons can go in and out there without incurring the least danger of contracting or carrying the disease. That the testimony of Mrs. Shaw could be taken at said home by the parties to this cause without running any risk or danger of contracting or carrying the disease. That the Assistant Postmistress of Benning is a sister of Mrs. Milstead and that she lives in said house and has lost no time from her duties on account of the said disease.

L. S. SAVAGE.

32 Subscribed and sworn to before me this 3d day of April 1906.

S. A. TERRY,
Notary Public.

[NOTARIAL SEAL.]

33 Counsel for caveatees thereupon in open Court offered to waive any notice and to proceed with counsel for caveators to the home of Mrs. Susan M. Shaw or to any other place at such time as the Court might fix, either before or after adjournment of Court, and there take the deposition of Mrs. Shaw and permit the same to be read as evidence in the case, which proffer was then and there rejected by counsel for caveators upon the same grounds stated in the motion and affidavit filed for the caveators.

Thereupon the Court overruled the motion and required the caveators to proceed to trial forthwith. To which ruling and action of the Court the caveators by their attorney then and there duly excepted and said exception was then by said Justice duly noted in his minutes.

34 Thereupon, before said Justice, over the said objection and exception of the caveators, a jury was empaneled and sworn to try said issues and at the said trial, begun and had on the 4th day of April, A. D. 1906, and thereafter continuing from day to day until and concluding on the 10th day of April, A. D. 1906, testimony was given and proceedings were had as follows:

The said Justice thereupon ordered that during the trial the caveatee, Frank E. Gibson, should be plaintiff and the Caveators, John Riddle, Sr., and Alpheus E. Riddle, should be defendants.

And thereupon F. B. EICHELBERGER, a witness produced and sworn on behalf of the caveatee, testified as follows: That is my signature to the paper writing dated September 12, 1905, propounded as the last will and testament of Kate Ross. She signed it in my presence & published, pronounced & declared it to be her last will & testament. She said she had broken her glasses and could not see very well; so Mr. Thompson secured a magnifying glass that was somewhere near and with the aid of that she signed the will in my presence. This was at the office of the Washington Loan and Trust Company in this city. I drew the paper up for her and asked her if that was what she wanted. She said "Yes." I said "Is this your last will and testament and you publish it as such?" She said "Yes. So I signed my name as subscribing witness.

Mr. Elliott H. Thompson, the other subscribing witness who saw her sign it, was the only other person present. He signed it in my presence. In my opinion when she signed it she was of sound and disposing mind and capable of executing a valid deed or contract. I do not know whether she requested us formally to
 35 sign as a witness. We said, "We are here to witness the will." She said "All right."

Upon cross-examination the witness Eichelberger further testified as follows: I was there & I said "I will sign it as witness," & she says "All right." There was no technical language used by her in requesting me to sign it. Q. She did not request you or Mr. Thompson either one, to sign as witnesses, did she—A. Yes. I do not recall the words she used. She requested us to sign but not in technical language. She requested us to sign. I never saw her to my knowledge before. She told me her name was Mrs. Kate Ross; that is the way I knew it was Mrs. Ross. The day she signed the will she came in about between two and half past two in the afternoon. I had never seen her to my knowledge before. I have no knowledge that any one came down with her. She introduced herself as Kate Ross to me, and said she wanted to have her will drawn. Upon that statement I drafted it and gave it to the typewriter. Mrs. Ross said she would come back that same day. She suggested the words, "My dear friend Dr. Frank E. Gibson" appearing in the will. I do not know him and never met him to my knowledge. I do not know whether or not she ever made any other will. I did not see any one come with her. She paid me my fee for preparing the will and took it away with her.

Thereupon ELLIOTT H. THOMPSON, a witness produced and sworn on behalf of the caveatee, testified as follows: That is my signature as witness and that is the signature of Kate Ross to the paper writing propounded as her will. I was summoned, as customary, either by Mr. Eichelberger or by a messenger from him, to come and sign as a
 36 witness the will of a lady named Kate Ross. I came and found Mrs. Ross, who wished to execute her will. I found she was not able to see the signatures and the writing on account of her failure to have her spectacles with her. I then secured a magnifying glass which we have in our office, a reading glass, and

gave it to her to use which she found satisfactory. She then signed her name in my presence and under my eyesight and after that the other witness Mr. Eichelberger, signed his name as a witness and then I signed mine in the presence of both of them. When she signed that paper I certainly considered that she was of sound and disposing mind and capable of executing a valid deed or contract.

Upon cross-examination the witness Thompson further testified as follows: I have never been personally acquainted with Mrs. Ross. I had every reason to believe that she was Mrs. Kate Ross. She was a depositer and a customer of the Loan and Trust Company. I do not recall how long she had been a depositer. I cannot recall that she had ever been identified to me as a depositer. I never had any dealings with her, directly, as a depositer. I never knew her personally as a depositer. I knew she was a depositer simply by having her account, I being then a bookkeeper there.

Thereupon the attorney for the caveators asked the witness "Have you any way of knowing that that was Kate Ross except that she signed her name as Kate Ross?" To which the witness answered, "By comparison of signatures;" to which answer the caveators by their attorney then and there objected and moved that the same be stricken out upon the grounds that the same was not responsive and was incompetent and inadmissible as evidence; but the Court

37 overruled the said motion, to which ruling the Caveators by their attorney then and there duly excepted and the exception was then duly noted by the Justice in his minutes.

Thereupon the Caveatee by his attorneys, offered in evidence the said paper writing mentioned in the issues framed and set forth in the record and offered for probate herein as the last will and testament of the said Kate Ross, and to read the same to the jury; to which the caveators, by their attorney then and there objected upon the grounds that the evidence was insufficient to prove the execution of the alleged will or to prove the identity of the person signing the same as Kate Ross or to prove that she requested the witnesses Eichelberger and Thompson to sign as witnesses to said paper writing; but the Court overruled said objection; to which ruling the caveators by their attorney, then and there, duly excepted and the said exception was then duly noted by the Justice in his minutes.

Thereupon subject to said Exception, the said paper writing was by the attorneys for the caveatee read in evidence to the jury.

And thereupon the caveatee rested.

Thereupon, JOHN RIDDLE, one of the caveators, produced and sworn as a witness on behalf of the caveators, testified as follows: Mrs. Kate Ross was my sister. The family consisted on eleven children of whom only three are now living, consisting of my sister, Mrs. Susan Shaw, my brother Charles Riddle, and myself. Charles is sixty-eight or sixty-nine years of age and lives at La Plata in Charles County, Maryland, where he has been living for

about ten years. I am seventy-two years of age. Mrs. Shaw
38 is in her eighties. She lives at Bennings, D. C. She has
been in bad condition for the last twenty years with some
physical ailment which confines her to her house most of the
time. Mrs. Ross was about sixty-four or sixty-five years of age
when she died. When I last saw her living was about three years
ago; probably more. One thing that kept me from seeing her dur-
ing the three years was that she worked at the office all the time, and
roomed, and was never at home except at night and then again
my own health kept me from going there. For the last eight years
I have been under the doctor's hands with rheumatism and bron-
chial trouble and the doctor prohibited me from going out at night.
I never knew Mrs. Ross' husband. I do not know when she was
married or anything about his death or how he disappeared or
whether or not efforts were made to locate him. I was here in
Washington and Mrs. Ross was living here at that time. She never
explained that to me and I never asked her anything about it.
She was living on New York Avenue near Tenth Street at the
time of her death. Do not know the number or how long she had
lived there. She was then employed and had been for twenty
years or more at the Bureau of Engraving and Printing. She
had one child, a daughter, who died sixteen or eighteen years ago,
I reckon. I first saw Dr. Gibson, the proponent of this will, at
Mrs. Ross' funeral. The first time I ever met him to speak to him
was the day after the funeral when he came to my house. I met
him on the street and he made himself known and I asked him
around to my house which was about half a square away, and he
went. I then had some talk with him about Mrs. Ross'
39 affairs. All he said about the will was that he did not know
anything about it until one morning she came in his office
and handed it to him and asked him to put it in his safe and
that is all he knew of it. He did not say how long he had had
it or what was in it. He did not say whether or not he was the
beneficiary under it; in fact, he led me to believe differently. He
said it was a very unthankful job; that he had everything in his
hands to deal with. But I was under the impression that he had
it for certain purposes which I did not object to at all. He said he
was neglecting his practice and he calculated that the relatives would
think that he was robbing them; that she had fitted up a room in
some institution—I think the Young Men's Christian Association
—in memory of her daughter and that if there was money enough
left she wanted one fitted up for her; that the tombstone was all
here and it was a pity it had not been put up so she could have
seen it before she died, but the masons were so slow. I understood
him to say the tombstone was paid for. I could not tell you ex-
actly the date of her death; my memory is not very long. (It was
then agreed between counsel that she died October 17, and was
buried October 19, 1905.) When the Doctor first came in I told
him I was very glad he had come because if he had not come I
would have gone to his office and thanked him for the interest he
had taken in my sister. He said he came down to get information

as to who the family was and where they lived. He ran off a list he had all written which gave him all the information I could. I did not then know, and he did not say, whether or not she had left any property of any kind. He said she did not want her relatives to have anything. I told him as far as I was concerned

40 I was not in need of anything and did not expect anything but if she had anything I should have thought she would have left it to her sick sister and he said he did not know about that or words to that effect. Then he said the reason she gave for not wanting me to have anything was that she was under the impression that I was afraid I would have to take care of her in her old age. I told him that was not the fact because my door was wide open to her dead or alive. Then he said the reason she did not want my brother Charley to have anything was because he got married to a young wife and drove his sons away from home. I told him that was not a fact because the boy left home of his own accord over two years before my brother got married. The only reason he gave me why she did not want to do anything for Mrs. Shaw was that she did not like Mrs. Shaw's son-in-law, Mr. Milstead. Milstead lives in the same house with Mrs. Shaw. These statements from the Doctor were voluntary; I never asked him a question. Finally I said "Well, if my sister had any small trinket of any kind as a memento, I would like to have it." He said "Whatever jewelry and treasures of that sort she had were buried with her." He did not say what they were. Since that time I have never seen him again until today. At the funeral I furnished my own carriage and my son furnished his. In my conversation with Dr. Gibson he referred to this and said he wondered if one of us had died whether my sister would have come down there with a carriage as we did to attend the funeral. Mrs. Ross was at my house on the occasion of the death of my wife and again on the death of one of my sons afterwards; how many

41 times I do not know. Throughout her lifetime my relations with her were amicable and as it ought to be between brother and sister. We never had a word in our lives. It was just the same between her and her brother Charles, as far as I ever knew. She and Mrs. Shaw were very intimate and she spent part of her vacation over there and I met her there on several occasions. I do not know that she had trouble with any member of her family or that they ever treated her unkindly in any way.

Upon cross-examination, the witness, John Riddle, further testified as follows: I am here today not because I am able to be here or want to be here. I am here to contest that will. If it is legal I don't care anything about it. If it ain't, I am opposed to it. I have visited Mrs. Ross on two Sundays that I recollect, but not within the last three years. My health would not permit me for one thing. There have been plenty of Sundays in the last 3 years I could have visited her if I had wanted to. I get out during the day time but not every day. I transact no business now at all. I have been out in the evening just once or twice in the last three years. Dr. Gibson did not tell me that by the terms of the will

all Mrs. Ross' property had been left to him. I did not tell him I was satisfied and that there would be no contest so far as I was concerned. I told him I did not need anything. He never said one word to me about the contents of the will. He misled me by the way he talked as to there being money enough left to furnish this room for her memory, and such as that. I am here for the protection of the relatives of that girl, what she had, and not allow a stranger to step in and put it in his pocket and walk off with it and me not say anything about it. I told him if
42 she had left it to me I should have said "Give it to my sister;" but at that time I was under the impression that it was left to him as a friend to do certain things with. I had no idea it was left to him to put in his pocket. The last time Mrs. Ross visited my home, it has been nearly five years. I couldn't name any dates as to when I last saw Mrs. Ross at Mrs. Shaw's. I have not been out to see Mrs. Shaw in the last two years. I did not tell Dr. Gibson I was satisfied with the will. I knew nothing about it only what he told me. I picked up the paper in an hour or a half hour after he left the house and saw that the will had been filed for probate that morning and then I commenced to think about it, and everything was left to him and I thought it was very strange.

Thereupon, Mrs. JULIA A. FLOYD, a witness produced and sworn on behalf of the caveators, testified as follows: I knew Mrs. Kate Ross a little over four years. I worked in the same room where she worked in the Bureau of Engraving and Printing. Her physical condition just before she died was very bad, I should say from appearances. She was feeble; could scarcely walk. Her work was examining and counting money. I don't know anything about that. I couldn't say how long she was in that condition prior to her death; it must have been over a year at least. I have often asked her how she felt. She would say she didn't feel well, or something like that. It seemed to rile her some to ask her about her health; she didn't like it. I have no knowledge as to her mental condition.

Thereupon Mrs. MINNIE A. TIMBERLAKE, a witness produced and sworn on behalf of the caveators, testified as follows: I live
43 at 941 New York Avenue Northwest. Mrs. Ross lived there with me for a short time before her death. She moved in there the last Saturday in July, 1905. I was out of the City, at Denver, during the month of September. She moved from Main's, 915 New York Avenue, in the same block. She had my second floor front room. She was under the care, all the time, of Dr. Frank E. Gibson. She went to his office for treatment after dinner. She told me she went and that his treatments were helping her. As a rule she would get home late at night. I was very often in bed when she came home. She told me she sat up with the Doctor's mother very late. I never knew her until she came there to live. About the third week after she came she spoke to me about her relatives and said her relations with them were unfriendly; that they

had not treated her kindly and had not helped her when they could have done so. I cannot describe her manner or her tone. She did not specify any of her relatives. She never spoke to me of her relatives except that one time. Her niece from Bennings visited her at my house two or three times before I went to Denver. Also before Mrs. Ross was stricken a young girl, a niece, I think came and brought something to eat once or twice. On Friday morning the day before Mrs. Ross was stricken, she went to work as usual and worked all day and then to dinner and then to the Doctor's office. I don't know what time she got home. It was after I retired. I retired about nine, as near as I remember. She usually

44 went out in the morning before six o'clock. On Saturday morning, between 9 and 10 o'clock Mrs. Hale a friend of Mrs. Ross, called and asked if she was sick. I did not then go up but between 10 and 11 o'clock Dr. Gibson came and rang my bell. He said "I have had a telephone message from the Bureau stating that Mrs. Ross is not at work this morning and I have been requested to call and see if she is sick." We went up and found her door locked on the inside. We got into the room and found her sick in bed. She talked with me. Dr. Gibson examined her and went away and brought another doctor. They decided to take her to the hospital. Dr. Gibson then, about 2 o'clock took her to the hospital.

On cross-examination, the witness, Mrs. Timberlake, further testified as follows: I asked her what should become of the things in her room; should her people have them. She said "No; nothing." She furnished her own room. She did not want her people to have anything.

Thereupon Mrs. FANNIE PERRY, a witness produced and sworn on behalf of the caveators, testified as follows: I have known Mrs. Ross about thirty years. I worked with her all that time at the Bureau. In her last days she seemed to speak of nobody hardly but Dr. Gibson and his mother; they were such great friends; she seemed to think nobody else were her friends. I never heard her say anything about her relatives. She said the doctor had been very kind to her and attended to her business and all such matters as that. She told me he attended to removing her daughter from Section O in Glenwood Cemetery to Section F; that she had never been very well satisfied with Section O but Dr. Gibson persuaded her to have her daughter removed up to Section F, next to his so that

45 they could attend to it. I had been attending to her daughter's place for sixteen years but after she said that Dr. Gibson was going to have it in charge I have not attended to it since. She said she had not anything to do with it; she had given Dr. Gibson the money to have Nita, her daughter, removed and everything done. She did not ever go out there when Nita was moved. She was entitled to leave at the Bureau with pay. She told me the reason she did not take it was because it was lonesome at home and she felt better satisfied at the Bureau. She said the Government had been kind enough to give her her time and if she

chose to give it back, it was nobody's business. Towards the last two or three months of her life she was very weak; could not get off and on the cars without help. She worked & attended to her duties.

Upon cross-examination, the witness, Mrs. Perry, testified as follows: I saw her every day. She had a strong will and a good mind. I cannot say she was of unsound mind. She could not easily be persuaded to do a thing against her will. She was of strong will and had a good mind. In my opinion she was not of unsound mind. She was not easily persuaded. She was all right in her mind to me. She told me Dr. Gibson insisted on her moving her daughter's body up there; that he would attend to it and he wanted it up there by his place, and it is right by his lot up in Section F.

Upon redirect examination the witness Mrs. Perry further testified as follows: Mrs. Ross was a very peculiar woman in her ways. She didn't care to have anything much to do with anybody. She was not one for having friends.

Thereupon Miss MARY E. OSTERMAN, a witness produced and sworn on behalf of the caveators, testified as follows: I have
46 known Mrs. Ross about five years. I was employed in the same room with her at the Bureau. She had rheumatism in her hands and in one of her limbs and some trouble with the knee of the other limb resulting from a fall she had in her earlier days. When she got up she could hardly get down again and when she sat down she could hardly get up. That was due, I think, to something wrong with the knee cap. She spoke of her relatives quite frequently and said they had never done any thing for her and had treated her rather mean in the years gone by. She often spoke of that. When I first knew her I heard her speak of them in that way. She said in time of need they did not come forward. I have heard her speak of them in that way quite often. I do not know what time of need she referred to. She did not have anything to do with them as they had never done anything for her. She was a woman of very strong will power. She worked and did her work thoroughly & properly to the last day she worked. Her physical condition did not prevent her from doing her work & she carried her work right through to the last day she worked & she did her work as well as I was capable of doing it myself. Upon cross-examination the witness testified as follows: Her physical condition did not affect her mentality. I would say she was of sound mind. I would see her in the mornings and in the evenings. I was usually associated with her the entire afternoon from lunchtime until the Bureau closed.

Thereupon, Mrs. ELIZA CLASPY, a witness produced and sworn on behalf of the caveators, testified as follows: I am a daughter of the caveator, John Riddle. Mrs. Ross was my aunt. I never
47 visited her. I have seen her at my father's house where I live. My relations with her were always friendly. I had no reason to believe that she felt her relatives were unfriendly

to her. About two years before she died she told me she had taken a few days' leave at the Bureau and that she was near about crazy; that she didn't know what to do with her time and wanted something to employ her mind. I heard some of the conversation at my father's house between him and Dr. Gibson. I heard Dr. Gibson give the reason why Mrs. Ross did not wish her relatives to have the money. The Doctor stated that she said the reason she didn't want my father to have it was that he thought he would have to take care of her in her old age and that my Uncle Charlie got married and turned his boy adrift, and that she was opposed to Mr. Millstead which was the reason she would not leave anything to Mrs. Shaw. My father told Dr. Gibson that Uncle Charlie remarried five years or more after his son had left him and that he thought Mrs. Ross would have left her property to her sick sister Mrs. Shaw. Dr. Gibson then left our house at half past four and at five o'clock we received the afternoon newspaper stating that the will had been filed for probate that morning. That was the first intimation I had as to what was in the will. Dr. Gibson said he had a very unthankful job; that the relatives would think he was robbing them; that all her jewelry was buried with her; that she had said she wanted her funeral to take place from Glenwood cemetery chapel as she had not a friend or relative that would receive her body living or dead.

Thereupon Mrs. MARY SMITH, a witness produced and sworn on behalf of the caveators, testified as follows: I am a cousin
48 of Mrs. Kate Ross, the decedent and knew her and kept up my acquaintance with her all my life. She first came to Washington to live when she was about thirteen years of age. She was about sixty-three when she died. I have lived here ever since 1854. She married Mr. Ross after the War and he left her about 1868 or 1869 when their child, Juanita, whom they call Nita was two years old and about four years after their marriage. Nita has been dead about twenty years. She was buried in Glenwood Cemetery. Mrs. Ross made efforts several times to find Mr. Ross and corresponded with his sister and other relatives and everywhere but never found him. During the last year or two of her life her health was failing. She said it was rheumatism. I visited her often. During the last year I visited her every three or four weeks and toward the last every two weeks. I visited her at Mrs. Timberlake's house, 941 New York Avenue, about three times. She and the members of her family never had any fusses, never quarreled, but she was somewhat prejudiced; said they were unkind to her. She was taken to the hospital in her last illness on a Saturday and I first heard of it the next day in Church. Mrs. Corey got it as a matter of neighborhood news and told me. After Mrs. Ross was buried Dr. Gibson came to see me at my house and we talked about her affairs. He said there was a will but did not say whether he had it or not. He said he was the administrator. About four weeks before she died she told me that she supposed her nieces, Mrs. Shaw's two daughters, would come in after her death and take possession but they would

49 find no money,—they would find some clothes. She had helped them frequently with donations of money. She never told me she had made a will or had left anything to Dr. Gibson.

Upon cross-examination the witness, Mrs. Smith, further testified as follows: Mrs. Ross said she thought her relatives ought to have helped her. She was a woman of very strong mind and very strong will; not easily persuaded because I have tried to persuade her. I never saw her when I thought she was of unsound mind. She always spoke of Dr. Gibson and his mother being kind to her.

Thereupon, Mrs. AL. DEWEY, a witness produced and sworn on behalf of the caveators, testified as follows: I knew Dr. Gibson and I knew Mrs. Kate Ross. Some time prior to July 14, he told me he had been treating her and that she came every day and paid him a dollar each time.

Thereupon, RICHARD F. ANDERSON, a witness produced and sworn on behalf of the caveators, testified as follows: My mother was a sister of Mrs. Kate Ross. There was never any trouble between her and her relatives that I know of. I live at Hyattsville and have been living within a mile or so of that place for the last thirty-five years. I knew Mrs. Ross all my life. We were raised together. We went to school together from my mother's house. Since childhood I have visited her occasionally; about once a year. A short while before she died I heard she was sick and I came over to see her. Last Fall I saw her out at Mrs. Shaw's, at dinner. Upon cross-examination the witness, Richard F. Anderson, further testified as follows: I don't think Mrs. Ross was of unsound mind. She
50 was peculiar in her ways sometimes. She had a strong will.

Thereupon Mrs. SARAH V. DONN, a witness produced and sworn on behalf of the caveators, testified as follows: I have known Mrs. Kate Ross forty or fifty years. For nearly a year before she died I continued to visit her about twice a week. She worked all day and my visits were from about seven to eight o'clock at night. When I last saw her she had a nervous spell; seemed to be a little queer, out of the way. She acted a little flighty. That is the only time I ever noticed it. She told me she thought a great deal of Dr. Gibson and that he was doing her a great deal of good. She thought a great deal of his mother—they were good kind friends to her.

Thereupon, CHARLES RIDDLE, a witness produced and sworn on behalf of the caveators, testified as follows: I am a brother of Mrs. Kate Ross. I have been living for about fifteen years at La Plata, Charles County, Maryland. I am near seventy years of age. There was never any unpleasantness between myself and Mrs. Ross. Our relations were always very friendly. I do not know of any reason why she should think that I or any of her relatives had deserted her. My son, Newton, came to this District to live about the year 1896. Was then a widower and remarried about three years after that time.

He asked me to let him come here on a visit and I consented. After he got here he got work and remained here, for which he asked and obtained my consent. Mrs. Ross never asked me anything about his leaving home or my remarriage. I never knew or had any reason to believe that she had any idea that I had driven him away from home. Whenever I came to this city and could visit her I did so.

51 Upon cross-examination the witness Charles Riddle, further testified as follows: I last saw Mrs. Ross alive two years before her death. During the last five years of her life I saw her three or four times at her room on New York Avenue. When I lived in Washington I called on her once a month or two or three months. She was never in my house in her life.

Thereupon ALPHEUS E. RIDDLE, one of the caveators, a witness produced and sworn on behalf of the caveators, testified as follows: My father, William Riddle, was a brother of Mrs. Kate Ross. He has been dead about twenty-five years. In my earlier life she and her husband have been to my house and stopped there for a week or more. I have met her at my Aunt Susie's, Mrs. Shaw's, together with her little girl. On something like the 4th of July Mrs. Ross and her husband and my father and other friends would take a wagon and go out to Gale's Woods—an old time custom. In later years I cannot say that I kept up my acquaintance with her. I visited her within two or three years and was very pleasantly received. So far as I know the feelings between her and her relatives were most pleasant. I never knew of any trouble at all or any unpleasantness. I never heard her complain of any relation.

Thereupon, JOHN NEWTON RIDDLE, a witness produced and sworn on behalf of the caveators, testified as follows: I am a son of Charles Riddle. I was twenty-seven years of age last February. Ten years ago I left my father's home at La Plata of my own accord and came here on a visit and got a job here and remained, for which I asked and obtained my father's consent. My mother died September 22, 1892. My father remarried May 30, 1900, three years and one month after I came here. I was on good terms with my aunt, Mrs. Ross. Every time my father came to Washington he would get me to go up there with him to see her and when we would leave she would tell us to come back again, when we came to Washington, to see her. We left on good terms always.

Mr. BAILEY: If the Court please, I wish Susan M. Shaw called again. I do not suppose she is here, but I will call for her.

(The witness referred to was called by the bailiff, but did not respond.)

Mr. BAILEY: Before I close the evidence I wish to renew my motion that I made yesterday morning, and inform the Court that in my judgment the evidence that I expect to be able to adduce by Mrs. Shaw, if I could get her here, would be material in this case on behalf of the issues joined on behalf of the caveators, and important; and I wish to assure the Court of the present exist-

ence of all the matters stated in the motion and affidavits that I filed yesterday morning with that motion for a postponement at that time. She is not here; she does not respond. (To counsel for the caveatees:) You did not subpoena her, did you?

Mr. BARKSDALE: Certainly not. We might renew the statement that we have heretofore made, that we hold ourselves in readiness to go with Mr. Bailey to take the testimony of Mrs. Shaw at her residence.

Mr. BAILEY: I wish to renew the statement, also, that I made yesterday, that I am not as rash as my Brother Barksdale
53 in going in where there is diphtheria, and I do not think it is proper, and my understanding of her condition would not permit me to force such a matter upon her at this time, on account of her own condition, notwithstanding Dr. Savage's affidavit.

The COURT: Well, I think the case will have to go on, Mr. Bailey. Of course if you can get her or get her testimony before the case is closed, I will allow you to do it; but I am not going to ask you to do it or force you to do it in any way. Have you any other witness?

Mr. BAILEY: No. Your Honor will allow me to note an exception to that?

The COURT: Yes.

Mr. BAILEY: And I now state that I have put in all the evidence that I am able to put in, under the circumstances; and I close the evidence.

Thereupon the caveators rested.

Thereupon the caveatee by his attorneys moved the Court to instruct the jury to return a verdict for the caveatee and against the caveators on each of said issues, but the Court overruled the motion and said:

The COURT: I hardly think I ought to instruct the jury in this case to return a verdict for the caveatees. There is some evidence that the jury should pass upon, I think, on both those issues; and I think you ought to put your testimony in.

Mr. BARKSDALE: If your Honor is satisfied on that point, of course I will not press the matter; but I have a couple of decisions here directly on that point.

The COURT: I would be better satisfied, myself, to hear
54 the testimony on both sides.

Mr. BARKSDALE: Very well, your Honor.

55 Thereupon the caveatee to maintain the issues on his part produced FRANK E. SPEARE who testified as follows:

I knew Kate Ross about thirty years. She came to my office, 940 F Street, a month or six weeks before her death and said she came down to consult me about making her will. She wanted to know to whom to go. In conversation I learned that her funds were in the Washington Loan and Trust Company and advised her to go there and have her will drawn. She said she wanted to leave her property so that her relatives would not get it; that not

one of them during her sickness had been even to inquire for her, that her relatives had never done anything for her. She wanted her money placed so that the ones who had looked after and cared for her would get the benefit of it. She came there alone and went away alone toward the corner of Ninth and F Streets.

Thereupon F. B. EICHELBERGER, a witness produced on behalf of the caveatee, testified as follows:

I received word that a lady wanted to have her will drawn and I went into Mr. Edson's private office and she introduced herself as Kate Ross. I asked her if she wished to appoint the Washington Loan and Trust Company executor or trustee and she said she did not. I asked her if she wanted to appoint an individual and she said "Yes." After some conversation I proceeded to take the necessary notes. She said she wished to leave all her property to Dr. Gibson and wanted him to be appointed her executor. She said she had relatives and I asked her if she wanted to make any provision for them in the will. She said she did not. I asked her why and she gave me to understand that they had not been good to her. She said her estate consisted of personal property.

56 She had some money on deposit with the Washington Loan and Trust Company. I told her I would have the will ready in three quarters of an hour and she said she would come back. Upon her return she wanted me to read the will to her which I proceeded to do and I asked her if that was what she wanted and she said "Yes."

Mrs. LAURA LOCHTE called on behalf of the caveatee testified as follows:

I knew Mrs. Kate Ross for about four years before her death and lived about a square from her and saw her quite frequently. I did sewing for her. In September before her death she came to my house and she said she had just come from the Loan and Trust Building. That she had been to see Mr. Speare to direct her to an attorney to make her will. That she had made her will and left everything to Dr. Gibson. That she did not want her people to have one penny. That they never did anything for her or come to see her in her sickness and affliction and her daughter's sickness and death. She said Dr. Gibson was very kind to her, more like a son. She was of sound mind and a very bright woman and had a very strong will. I don't think any one could move her if she had made up her mind.

On cross examination the witness further testified as follows: She was under Dr. Gibson's care.

Miss MINNIE MAIN, a witness produced on behalf of the caveatee testified as follows:

I knew Mrs. Kate Ross five and one half years before her death. She roomed at my house and we were very intimately associated and I saw her every day. She said her relatives
57 did not think very much of her and never came to see her.

She said they had never done anything for her when she needed help. She said they were not to have anything if she could help it. She spoke of Dr. Gibson in kind and grateful terms and said that his treatments had relieved her greatly. She and Dr. Gibson's mother were very good friends. I believe she was of perfectly sound mind and never saw anything that would indicate insanity or anything bordering on insanity.

On Cross Examination the witness further testified:

She talked to me of her relatives very often. For the last month or two before her death she was not feeble but she was not strong or hearty. Her nieces from Bennings visited her three or four times and Charles Riddle once of my own knowledge, at my house. Her relatives may have visited her there on other occasions without my knowledge.

Miss NETTIE MAIN, a witness called on behalf of the caveatees, testified as follows:

I knew Mrs. Kate Ross about five and one half years before her death. She resided in my house for that length of time and I saw her most every day and talked with her. She said her relatives never did anything for her and that they were not friendly with her. She said she did not want her relatives to have anything. She said she was very grateful to Dr. Gibson and that his treatment was helping her. She was very friendly with Dr. Gibson's mother. She said she went to see Mrs. Gibson. She was
58 a woman of sound mind and I never noticed anything of a peculiar nature in her acts or conversation.

On cross examination the witness further testified:

Mrs. Ross' rheumatism was pretty bad, some days better and some days worse. She appeared to be getting better under Dr. Gibson's treatment. She felt very kindly toward Mrs. Shaw and toward Mrs. Shaw's children and grandchildren. I met her nieces several times in her room.

PETER G. STELLE, a witness produced on behalf of the caveatee testified as follows:

I am employed at the Bureau of Engraving and Printing and knew Mrs. Kate Ross for about twenty years. I worked in the same room with her all the time. Her work consisted of counting and assorting work. Her work required both physical and mental activity. She counted postage stamps and afterwards examined letter patents and white work of different descriptions. If she made a miscount we would be detained until the mistake was found. She was accurate in her work and she was considered to be first class. She said her relatives never did anything for her and she did not propose to do anything for them. When she made up her mind for anything you could not change it. I considered her to be of sound mind.

On cross examination said witness testified:

She did a days work at all times. I have heard her complain about her rheumatism and at different times have helped her on

the car. When she could work extra she made extra time. She never allowed anything to interfere with her work. We have been working until five o'clock for the last two or three years.

59 When there was extra work to be done and she was called on to stay she always stayed. During the last two years of her life her rheumatism affected her somewhat, so that she was not given the task that other girls had to perform.

Miss ELIZABETH COYLE, a witness produced on behalf of the caveatee testified as follows:

I knew Kate Ross for about twenty five years and worked side by side with her in the office. She performed her duties very nicely. She said her relatives did not treat her nicely and she did not intend to leave them anything. She said she intended to give all her property to Dr. Gibson who attended her. She had a very strong will and in my opinion was of perfectly sound mind and I never saw anything of a peculiar nature about her words or actions. Cross-examination. I think she was perfectly competent to do her work and I never heard any objections. I observed no difficulty. She was able to do the counting as well as she was five or ten years ago. She said her nieces paid her very little attention and did not visit her. She told me she would leave money to Dr. Gibson one afternoon when she came to dinner with me six or eight months before her death. That she was going to ignore her people entirely and leave her property to Dr. Gibson if she had anything to leave. Said she had money in the Loan and Trust Company. She told me she had made a will; that she had left her property to Dr. Gibson. This was a subject that seemed to be uppermost in her mind most of the time.

GUSTAVE E. ROTT, a witness on behalf of the caveatee testified as follows:

60 I knew Mrs. Ross fifteen years before her death and during that time saw her about once a week. She dealt with me in market where I have a stand. She was in my opinion a woman of sound mind.

On Cross Examination said witness testified:

I am satisfied her mind was all right and clear and base my opinion in her accurate way of doing business and also the fact that she dealt with me. If she owed you anything she knew it as well as you did. She knew what she wanted to eat and got it and paid for it.

Mrs. ANNIE E. BEALLE, a witness on behalf of the caveatee testified as follows:

I knew Mrs. Kate Ross for about twenty five years in the Bureau of Engraving and Printing and saw her every day. I had charge of the work on which she was engaged and she did her work well. I have heard her say that she did not care anything about her relatives and that they did not take any interest in her. I saw her on Friday before her death on Tuesday and she was able to come

down and do her days work. I am of the opinion that she was of sound mind.

On cross examination the witness further testified:

She had to be helped on and off the cars sometimes. That continued for five or six months before she died. She was able to do as much work the last six months or year as she had been two or three years before that. The work did not become less and less toward the last. She said Dr. Gibson was treating her and that his treatment was doing her good. This was either Thursday or the last Friday I saw her.

61 HANNAH J. DEVOE, a witness produced on behalf of the caveatee testified as follows:

I knew Mrs. Kate Ross four years before her death and was employed in the same room with her and had frequent conversations with her. I heard her say to let her relatives work for her money like she had done. I saw her at the office on Friday before her death on Tuesday. She was a woman of a very strong will and determination and I should say she had a very strong mind.

On Cross Examination the witness further testified:

A short time before she died she said she was getting better, that Dr. Gibson had helped her more than anybody else had done. During her last sickness I heard her say, "I just love Dr. Gibson. He has done me more good than anybody ever did and I just love him."

Mrs. BELLE DEWEY, a witness produced on behalf of the caveatee, testified as follows:

I knew Mrs. Kate Ross for about twenty eight years in the Bureau of Engraving and Printing. Our desks were side by side. Her capacity as a counter and examiner was first class. She said when her daughter was an infant she was thrown on the world penniless. Had to walk to Bladensburg with her infant in her arms. Not a soul came forward to assist her. That she intended to cut out her relatives entirely and give her property to those who had been kind toward her. She spoke in the highest terms of Dr. Gibson's mother before she went to him for treatment and said she was improving under his treatment. Before she made a will she told me she was going to do so and she would fix it where
62 she thought it would be in safe hands and her wants and wishes carried out. She was as strong in mind and determination as the strongest rock that ever was built. You could not move her. I would say she was of sound mind.

On Cross Examination the witness further testified:

My relations with Mrs. Ross were very intimate. Her rheumatism did not interfere with her examining and counting. She died on Tuesday and worked at Bureau on Friday before. That she told me this in 1877 and said at that time her feet were on the ground and she said the object of her trip was to get a nights lodging as she had no money to pay for it where she was living in the City and that her husband was not living with her. She did

not tell me that her relatives knew anything of her destitution. She said she would not wipe her feet on any of her relatives and said that they would not come forward if she was dying with a crust of bread in their hands for her.

Dr. THOMAS A. CLAYTOR, a witness on behalf of the caveatee, testified as follows:

I am a practicing physician and met Kate Ross on October 14th when I was called to see her in consultation with Dr. Gibson. That was on Saturday before her death. I saw her five times in all and conversed with her. She finally died at Garfield Hospital on the following Tuesday night of Pneumonia. I am of the opinion that she was of sound mind.

WILLIAM MILLER, a witness on behalf of the caveatee, testified as follows:

63 I am employed at the Columbian Title Insurance Company and knew Mrs. Ross about two and one half years and during that time saw her at least once a week and sometimes two or three times a week. In July 1905 Mrs. Ross called at my office and said she wanted a will prepared stating that she wanted whatever property she might have at the time of her death given to Dr. Frank Gibson. I asked her if she had any relatives and if so did she wish them to receive any part of her estate. She stated that she did have relatives but she did not want them to get any of her estate. That will was afterwards executed by her. In my opinion she was undoubtedly of sound mind. She told me to name Dr. Gibson as executor.

Miss FANNIE C. ELGIN, a witness on behalf of the caveatee testified as follows:

I am employed at the Bureau of Engraving and Printing and knew Mrs. Kate Ross at the Bureau a year prior to her death. I was in the same room with her. She said she had been left with one little child to take care of and that her people had not helped her at all. She said she was going to leave her property to Dr. Gibson. That she did not want her relatives to have it at all. I went to the Palace Bowling Alley at Mrs. Ross' request to witness her will and I did so. I went with her from the office. I always thought Mrs. Ross was of sound mind and she was of very strong will.

On Cross Examination the witness testified:

64 She said that none of her family had taken her in and provided for her at the time she had that baby. She never said she had asked them to take her in. She told me several times she intended all her property to go to Dr. Gibson. The last time she said that was in September.

Mrs. EMMA MILLER, a witness on behalf of the caveatee, testified as follows:

I am employed at the Bureau of Engraving and Printing and knew Mrs. Kate Ross there for about five years prior to her death and

I saw her every day she was at work. We were employed in the same room and I considered her about one of the best examiners and counters in the division. I heard Mrs. Ross give instructions to my son William Miller, to prepare her will and she was very positive that she would leave what she had to Dr. Gibson and she was positive that she did not want her relatives to have anything she had. She said she was very anxious that her name should be explicitly understood, that she was Kate Ross and the first will was drawn in the name of Katherine Ross otherwise known as Kate Ross and her reason for having another will drawn was that it should be just plain Kate Ross. She was so afraid there might be some technicality about it and they might try to break it. She did not want her will broken and she wanted it drawn by somebody to be more determined that her will should not be broken. She said she had been in want and her relatives had never done anything for her and for that reason she wanted her money to go to whoever she saw fit to give it and she did not want her relatives to have anything she should leave. I do not think she could be easily influenced. She was very positive in everything she said or done. There was no doubt in my mind but what she was perfectly sane. I do not think there could be a person of more sound mind than Mrs. Ross.

65 On Cross Examination the said witness testified:

She was suffering from rheumatism but it did not affect her mind in any way. She said the reason why she did not want her relatives to have any of her property was that she had been in want and knew what it was to want bread and she was alone here and had a little baby to support and she knew what it was to want and her relatives had full and plenty. They had never given her a crust of bread. She said that was before she had any work to do. She did not tell me what year it was or how many years ago. She spoke of it as being in years before. She said "I am not fighting mad with them or anything like that, but I know what it is to be in want and now I don't want what these hands have worked for and my heart has bled for to go to people that have never given me a crust or knew whether I wanted bread or not. Now that I worked and accumulated this I don't want it to go to them." She told me that in the summer when she was speaking about the will. She told me that repeatedly after the will was made. When the last will was made she said "I am so particular I want it thoroughly understood what my wishes are." She told me in September that she had a will drawn at the Loan and Trust Company. She said that her relatives knew that she was in need and never came near her.

Dr. FRANK E. GIBSON, the caveatee, testified as follows:

I am a physician and knew the late Mrs. Kate Ross. I met her at my home through my mother. She afterwards asked me if I could do her rheumatism any good and placed herself under
66 my care. She had been a visitor at our house before I began to treat her. I began treatment December 1, 1904 and continued up to the time of her death. Sometimes she would come every week sometimes every day. At her request I had her daugh-

ter's remains removed from one section of the cemetery to another. I purchased the lot and made the arrangements for her. She said she could never repay me for that and that I could not understand how little kindnesses of that kind were appreciated by a mother. On the Friday before her death I learned from the Bureau of Engraving and Printing that she was not at work and so I went to the house where she had a room and in company with the lady of the house we went to her room and found it locked. Upon gaining admission through another door we found Mrs. Ross very ill. She was conscious but after an examination I called in Dr. Claytor and upon examination we concluded to have her removed to Garfield Hospital and from the time of her removal to the time of her death I saw her from twenty to forty times. I stayed at the hospital most of the time and gave up my practice for her. In consultation with Dr. Claytor on Tuesday we decided that Mrs. Ross could not live much longer. After we decided that death was imminent I went to my office and got a paper out of my safe. That paper was enclosed in a sealed envelope which Mrs. Ross had handed to me one evening and asked me to place it in my safe. This was about the middle of September before her death. I asked her what it was and she said never mind it will tell you what to do in case I go first. Without opening it I placed it in my safe after Mrs. Ross had left. I did not know what it was and she did not tell me what it was or give me

any further information about it except what I have related.

67 The next time I saw that paper was on the Tuesday when Dr. Claytor and I had decided that Mrs. Ross could not live much longer. I went to the safe and took it out because I wanted to find out what that paper contained before Mrs. Ross died in case it contained anything that I would have to ask her about. Before I took that paper out at that time I did not know what its contents were. Mrs. Ross had never given me any further information about it. She never said anything to me about what property she had or in what direction she wanted it to go. Mrs. Ross told me on more than one occasion that if she was ever taken seriously ill she wanted to be taken to the hospital if I deemed she was ill enough to go. She was buried from 915 New York Avenue and her relatives never made any request that she might be buried from their home. None of them communicated with me about it nor in connection with any matters about the funeral. In my opinion she died of pneumonia. I did not tell Mrs. Susan Shaw that Mrs. Ross' will was prepared and signed by her at the Washington Loan and Trust Company and that I took her there for that purpose. I have not since Mrs. Ross' death made any efforts to induce Mrs. Shaw to oppose the caveators and to withhold from them any information in her possession material to the issues to this case. I have seen Mrs. Shaw twice only. The first time I went out at her request to talk with her regarding her sister's death and last sickness. I do not know of anything I did to induce Mrs. Ross to make this will or any other will in my favor. I never said anything to her about it and never talked to her about making a will. She never said anything to me

68 about making a will. After Mrs. Ross came to me for professional treatment she continued her visits to my mother.

Mrs. Ross lived about two squares from our house. In my opinion Mrs. Ross was of very sound mind and had a very strong will and determination.

Cross Examination. I never had any conversation with Mr. Speare about the will until after Mrs. Ross' death. She did not tell me when she executed the will or where it was executed or who wrote it. I had never heard of her having a previous will drawn up until after her death. I am not related in any way to Mrs. Ross. I had never been inside of her house until her last illness. She entertained the warmest sisterly affection for Mrs. Shaw and always spoke kind of her. She spoke of her brother John and said they had never been like brother and sister. She said her husband had left her without any money with a little daughter and she had to go and earn her own money and that her family never did help her until finally she received an appointment in the Bureau of Engraving and Printing and since that time she had been perfectly independent of them. That they had not cared to come and see her when she needed help and she did not intend to go and see them. She did not say anything to me about what she intended to do with her property or whether or not she was going to leave it to her family or to me. I had advice from Mrs. Ross not to send for any of her relatives in her last illness. She never said that she had a will. There was nothing on the envelope that I remember of.

I treated Mrs. Ross for rheumatism. It was acute and chronic.

69 I reported the case to the Medical Society because it was a peculiar case. At times she had acute rheumatism with the chronic which is unusual. My first and last treatment was practically all static electricity with prescriptions at different times. I will be 33 years old on the 16th of next November. I have been in general practice about six years. She first spoke to me about her relations with her brothers and sister maybe three to six months before she died. She said that her relatives never came to see her and when she was able she used to go to see her sister Mrs. Shaw. One day she asked me if I could do Mrs. Shaw any good and I told her that I would be very glad to do whatever I could but I could not go to Benning. She said she had always helped Mrs. Shaw and gave her money from time to time and was paying her life insurance and gave Mrs. Shaw's children all her old clothes. She always indicated the warmest sisterly affection for Mrs. Shaw. She said that her brother Charles' son could not get along with his father very well since his father had married this young wife and that the boy had come up here to the city and seen her and that she tried to help him all she could. From the time I found her sick in her bed until she died I did not think about her relatives. All my attention was devoted to her. I first thought of the paper in my safe, the will, on Tuesday morning. Her lungs were then beginning to fill up. She died that night at fifteen minutes after eleven. She was conscious up to thirty seconds before she died.

Q. When did it first occur to you that it would be proper under

70 the circumstances as she had related them to you, that she was separated from her family, but that there were two of them here, one of them she was very fond of—when did it first occur to you that you might send word out to Mrs. Shaw at least? A. It did not occur to me.

Q. And you had given up your practice from Saturday morning until Tuesday night and was with her almost all of the time and yet it never once occurred to you that you should ask her where you could find her relatives so you could send for them? A. I had word from Mrs. Ross not to do that. (Witness continuing) She did not say anything like that after I found her stricken Saturday morning. She did not refer to her family at all. The only ones she asked for were Miss Minnie Main and my mother. Miss Main saw her and as my mother was not well at that time I thought it would be best for my mother not to see her. In my conversation with John Riddle I told him that Mrs. Ross' jewelry was buried with her or some of it. Her watch and wedding ring were buried with her. She had not requested that. She did not tell me that she did not want any of her relatives to have anything that she would leave.

Thereupon the caveatee rested.

And thereupon CATHERINE C. GARVEY, a witness produced and sworn on behalf of the caveators testified as follows: I have known the decedent about thirty years. I worked with her for the last four years in the Bureau of Engraving and Printing in the same room with her. Toward the last part of her life she was a physical wreck. I have seen several help her at different times to dress to go home.

71 Thereupon CHARLES RIDDLE a witness on behalf of the caveators was recalled and further testified as follows: I have heard the testimony in this trial in regard to what Mrs. Ross said about her destitution about the time she had this young baby and about carrying it to Bladensburg in her arms.

Q. State whether so far as you know you ever had any information that that statement was true.

To which question the Attorneys for the caveatee objected and the Court sustaining the objection said: I do not think that is in rebuttal of what she said, though, about it. What the witness said that she told her was all there was about it. She said she told her she had to carry the baby out to Hyattsville, or Bladensburg.

Mr. BAILEY: I want to show that that statement, if Mrs. Ross said that, was not true, or if it was true that her relatives had no knowledge of it.

The COURT: I know, but this does not deny that. This does not refute that statement at all. It is an argumentative kind of a matter.

Mr. BAILEY: I want to show whether or not the relatives had any knowledge of any such condition of things as depicted by any such statement of her having to go to Bladensburg on foot.

The COURT: I do not think that is material at all.

Mr. BAILEY: Does your Honor rule it out?

The COURT: If there is an objection made——

Mr. WILSON: Oh, I object to that; yes, indeed.

Mr. BAILEY: If your Honor please, in order that the record may be clear on the point, I wish to state that I offer this
72 testimony, and I offer to prove by this witness that at that time he was in a position to know whether or not his aunt was in any such condition of destitution, and whether or not any of her relatives had treated her in the way in which they are said to have treated her by the evidence that the other side have put in, and if it was true that none of them knew anything about it.

Mr. BARKSDALE: And we object.

The COURT: I think it is too far back, too remote here.

Mr. BAILEY: It was right after that child was born.

The COURT: I know, but, I say, I think that is a little too remote. Proof of the circumstances at that time will not dispute the fact that she said that. That is one reason that she had in her mind, perhaps, and it has been testified that she said it. Whether it is correct or not is another question.

Mr. BAILEY: If the Court please, I do not wish to be too persistent; but it seems to me that it may be important or material for us to show that if she made that statement she had no basis, no reason to make it.

The COURT: I do not really see what you have got to stand on in this testimony as it is now. There is not a syllable of testimony to show but what that woman was of sound mind that I can see.

Mr. BAILEY: If your Honor please, I note an exception.

The COURT: And it seems to me it is not worth while to spend any further time on the case. That is the way it looks to me this morning.

73 Mr. BAILEY: Very well; that is all, then. Now, if the Court please——

The COURT: Unless you have some fact that you want to prove that will throw some more light on it.

Mr. BAILEY: If the Court please, I offer also these other two witnesses. Mr. John Riddle is unable to be here this morning, and I want to prove that he is unable to be here to rebut certain testimony of Dr. Gibson.

Mr. WILSON: You went into that conversation fully in your testimony in-chief, Mr. Bailey, as to Mr. John Riddle.

Mr. BAILEY: Well, the Doctor says that Mr. John Riddle told him these things, and that he did not tell him.

Mr. WILSON: But he was asked that on cross-examination on your examination in-chief.

Mr. BAILEY: Who was?

Mr. WILSON: Mr. John Riddle.

Mr. BAILEY: I do not think he was.

Mr. WILSON: Well, he was.

Mr. BAILEY: Well, that is all, Mr. Riddle. If the Court please, I wish to offer that same evidence, and your Honor rules it out?

The COURT: You can make the offer if you want to put it on the record.

Mr. BAILEY: Shall I call the witness to the stand?

The COURT: Yes.

Thereupon RICHARD ANDERSON was recalled on behalf of caveators and testified as follows.

I heard the testimony in this trial concerning the statement said to have been made by Mrs. Ross as to her destitute condition when she had a young baby and having to walk all the way to
74 Bladensburg. Thereupon the following question was asked.

Q. State whether or not you were in a position at that time, at the time she had that young baby, to know her condition, if she was in such a condition as described by that witness, Mrs. Belle Dewey?

To which question attorneys for caveatee objected and the Court sustained the objection and refused to permit the witness to answer the question on the ground that it was an attempt to contradict something by circumstantial evidence that was not competent at all, to which ruling counsel for the caveators then and there duly excepted and the exception was by the said Justice duly noted in his minutes.

And next the caveators produced evidence tending to prove that John Riddle, one of the caveators, who testified at the trial is ill with a severe attack of bronchitis and is confined to his bed.

Thereupon the caveators rested.

The parties had no further testimony to offer and the foregoing was all the evidence that was given at the trial.

Thereupon the Court said: The question in my mind is whether there is anything to go to the jury in the case, to base an argument upon here.

Mr. BAILEY: That is exactly what I wish to address myself to. Shall I proceed in the presence of the jury?

The COURT: I do not know whether counsel on the other side are going to make the motion or not.

Mr. BARKSDALE: Yes, your Honor; that is what we expect to do when the time comes. If the Court wants to hear us on
75 that proposition——

The COURT: No; I will hear Mr. Bailey on the question whether there is anything here to go to the jury at all in this case on any of these issues. Of course I have in mind what the Supreme Court said in the recent case they decided up there as to what the rule was in the Federal Courts, and it seems to me there is nothing here at all what would allow this case to go to the jury. I read what they say in that case:

“In such actions the testator cannot be heard, and very trifling matters are often pressed upon the attention of the Court or jury as evidence of want of mental capacity or of the existence of undue in-

fluence. Whatever rule may obtain elsewhere, we wish it distinctly understood to be the rule of the Federal Courts that the will of a person found to be possessed of sound mind and memory is not to be set aside on evidence tending to show only a possibility or suspicion of undue influence. The expressed intentions of the testator should not be thwarted without clear reason therefor."

Now, I do not see a thing in this testimony that would authorize a verdict, if the case went to the jury, against this will, on any issue that is raised here at all. Of course the greatest objection to the will is that it wills the property away from the relatives, the heirs. But if she had a good, sound mind when she made that will, she had a perfect right to do that. According to some of the testimony, she earned every cent of it herself by her hard work; and certainly there was no warm relationship here between her and her family. There

76 is nothing that would induce the idea that she did not like them, hated them, or was regardless of their feelings about the matter that would make that an insane delusion at all.

She may have been prejudiced, but she may have had a right to be prejudiced; but she may have had a right to be prejudiced if she was not insane. So there is nothing that I can see at all that would, in the face of this testimony on both sides, warrant the presumption that that was an insane delusion that she had with reference to her relatives. Their own statements were that there were very infrequent visits between them. There was nothing that was very cordial, at least, between them. Whether there was any ground for it or not, is an entirely different question. We are not trying the question as to whether she had a right to disregard them or to regard them in that light or not; but it is only a question going to the extent of the insane delusion, whether she had delusions about the matter to such an extent that we must class them as insane delusions. And I cannot see any evidence here that would go to that extent at all.

(Mr. Bailey thereupon addressed the Court in support of his contention.)

The COURT: The trouble is that it requires more than a suspicion. I do not see any evidence here of undue influence at all except the mere fact that she made the will to the Doctor.

(After further discussion:)

The COURT: It seems to me, Mr. Bailey, that this testimony of those women that were employed down there that this lady was
77 sane has been so overwhelming and conclusive that the caveatees have discharged their burden; that they have shown that this woman was perfectly competent to make a will. She worked there up to the last day before she was taken sick, and did a full day's work, and was perfectly sound in mind about everything. The testimony in regard to the making of the will itself shows that she did it of her own notion about it; and unless you can show that that notion was an insane notion, there is an end to the matter, because you cannot go back of her will about it if it was a voluntary act of hers and she was competent to make it. It seems to me you have no evidence at all that you could go to the

jury on, on these authorities that you are citing now. I refused to take the case from the jury when you got through with your testimony, because there are some things that ought, perhaps, to be explained, or something of that kind. But the explanation has been full and complete, it seems to me.

Mr. BAILEY: If the Court please, your suggestions assume that the capacity of the executrix to do her work is sufficient.

The COURT: Yes—well, you have not anything to the contrary. You have not a word to the contrary, except that on certain occasions she was sick physically.

Mr. BAILEY: I think your Honor overlooks one fact—that it is well settled that while a person may be sane on all subjects but one, if she is insane on one subject, and that has an influence in bringing about and producing the will, that would be enough; that would be enough for the jury; that is my contention. I do not say that this woman is insane—I have said that all along—except on one subject.

78 The COURT: But on that one subject you would have to show a total lack of any foundation for it; and your own testimony shows that there was ample foundation for her to get that notion without being insane about it. She may have been wrong about it, I say, entirely wrong; she ought not to have drawn that conclusion, perhaps; but it has been shown that there was no great warmth between these people. She had these two brothers and this sister, and the evidence goes to show that she was not entirely pleased with the sister's son-in-law, or something to that effect, something about the family matters. She had a sister that had children and was being taken care of by them, and these brothers seemed to be taking care of themselves; and this lady had been by herself so long earning this money and saving it up, brooding over it, so to speak, and determining that she had earned it herself and was going to dispose of it as she saw fit. I do not see that you can make out an insane delusion in anything of that kind at all. It may be wrong, but it seems to me that it is not an insane delusion.

Mr. BAILEY: In view of what your Honor has said of the character and the effect of the evidence, I should be taking up time needlessly if I should say anything more about it; and the thing might be disposed of now. I suppose, your Honor will direct a verdict?

The COURT: I will direct a verdict in favor of the will here on these issues, and you can take your exception and save the time of argument; because I do not think, if a verdict was rendered here, if you argued the case to the jury and they rendered a verdict against this will, I do not think I would be justified in allowing it to stand at all on this testimony. That is the reason I suggest taking the short cut on it now.

Mr. BAILEY: The thing may go as far, then, as it can; the judgment can be entered up here?

The COURT: Certainly.

Mr. BARKSDALE: I understand by that you waive your right to make a motion for a new trial?

Mr. BAILEY: Why, of course.

Mr. BARKSDALE: The answers to the issues ought to be taken now. You will have a chance to file a motion for a new trial if you want to.

Mr. BAILEY: I am not going to do that.

The COURT: Gentlemen of the jury, under the view that I take of the law and the testimony in this case, I will say to you that you should answer the first interrogatory here, "Was the said paper writing duly executed in due form of law as and for the last will and testament of the said Kate Ross," "Yes;" and the second interrogatory, "Was the said paper writing procured from the said Kate Ross by undue influence," answer that "No." "Was the said paper writing procured from the said Kate Ross by fraud?"—answer that "No." "Was the said Kate Ross, at the time of the execution of the said paper writing, of sound and disposing mind, and capable of executing a valid deed or contract?"—you should answer that "Yes."

(The verdict of the jury was recorded as above directed.)

Mr. BAILEY: If the Court please, as to each of these instructions I note an exception.

80 The COURT: Yes.

And thereafter on the 19th day of April 1906, judgment upon said verdict was entered for the caveatee admitting the said paper writing to probate as the last will and testament of the said decedent and thereafter on June 1, 1906, the time for presenting the bill of exceptions to the Court for settlement was duly extended until the second day of August, 1906, on which last above mentioned date the caveators by their attorney duly submitted the same and prayed and pray the Court to sign and seal this, their bill of exceptions which is accordingly done *nunc pro tunc* this second day of November, A. D. 1906.

JOB BARNARD, *Justice*. [SEAL.]

(Endorsement: Bill of Exceptions. Lorenzo A. Bailey, Atty. for Caveators. Wilson & Barksdale, Attys. for Caveatee. Filed Nov. 2, 1906. James Tanner, Register of Wills, D. C., Clerk of Probate Court.)

81 Supreme Court of the District of Columbia, Holding Probate Court.

In re Estate of KATE ROSS, Deceased. No. 13244, Administration.

The clerk will please prepare the transcript of record to be filed in the Court of Appeals in the appeal by the Caveators herein, including therein the following, viz:

1. Petition, filed Oct. 26, 1905, for probate of will &c.
2. Alleged will, filed Oct. 20, 1905, with verdict.
3. Caveat, filed Nov. 9, 1905.
4. Answer, filed Dec. 16, 1905, to caveat.

5. Order, filed Jan'y 10, 1906, framing issues, &c.
6. Order, filed M'ch 12, 1906, postponing time of trial.
7. Certificate, filed April 4, 1906, of Health Officer.
8. Docket entries as follows:

"April 4, 1906, Order that issues be tried by jury in attendance upon Criminal Court No. 2 and making Caveatee plaintiff and Caveators defendants, filed.

Jury sworn and respited until tomorrow.

April 5, 1906, Jury respited until Monday next.

April 9, 1906, Jury respited until tomorrow."

9.

10. Orders (2) filed April 19, 1906, overruling motion for new trial and admitting will to probate, &c.

11. Docket Entries as follows:

"May 15, 1906, appeal bond approved and filed."

82 12. Memo. as follows:

"June 1, 1906, time for presentation of bill of exceptions extended to August 2, 1906, and for filing record in Court of Appeals to Sept. 5, 1906.

Aug. 2, 1906, Proposed bill of exceptions presented to the Court for settlement.

Aug. 15, 1906, Time for filing record in Court of Appeals extended to Nov. 5, 1906.

Nov. 2, 1906, Time for filing record in Court of Appeals extended to Nov. 30, 1906."

13. Bill of exceptions.

14. This order.

LORENZO A. BAILEY,
Att'y for Caveators.

Nov. 3, 1906.

(Endorsement: Order by Att'y for Caveators, for preparation of transcript of record on appeal. Filed Nov. 3, 1906. James Tanner, Register of Wills, D. C., Clerk of Probate Court.)

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Form No. 94.

Supreme Court of the District of Columbia, Holding a Probate Court.

DISTRICT OF COLUMBIA, *To wit:*

I, James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court, do hereby certify the foregoing pages, numbered from 1 to 82, inclusive, to be true copies of the originals of certain papers on file in the office of the Register of Wills, Clerk of the Probate Court, in case No. 13,244 estate of Kate Ross deceased, wherein John Riddle, Sr., and Alpheus E. Riddle are appellants, and Frank E. Gibson is appellee, the same constituting a full, true, and correct transcript of record of proceedings had in said cause according to the Order of counsel filed therein and made a part hereof.

I therefore certify, That the bond for appeal, in the penalty of Two Hundred and Fifty dollars, was duly filed by said appellants, and approved by said Court on the 15th day of May, A. D. 1906.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said Probate Court, this 30th day of November, A. D. 1906.

[Seal Supreme Court of the District of Columbia.]

JAMES TANNER,
Register of Wills for the District of Columbia,
Clerk of the Probate Court.

Endorsed on cover: District of Columbia supreme court. No. 1741. John Riddle, Sr., *et al.*, appellants, *vs.* Frank E. Gibson. Court of Appeals, District of Columbia. Filed Nov. 30, 1906. Henry W. Hodges, clerk.



